

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

KEVIN DE'SHUN BROWN,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-09-290-C
)	
ERIC FRANKLIN, Warden,)	
)	
Respondent.)	

ORDER

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Robert E. Bacharach, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Bacharach entered a Report and Recommendation on September 10, 2009, to which Petitioner has timely objected. The Court therefore considers the matter de novo.

The facts and relevant law are set out in full in the accurate and well-reasoned opinion of the Magistrate Judge. No point would be served in repeating that analysis. Petitioner's only objection is to the recommendation relating to Ground Six of the Petition – sufficiency of the evidence. Petitioner contends Judge Bacharach failed to address the sufficiency of the evidence regarding the “force or violence” element of the charge. However, Petitioner never raised that issue prior to the filing of his objection. Rather, the only issue raised in the Petition or Brief was that penetration was not proved, an argument fully addressed and

appropriately rejected in Judge Bacharach's Report and Recommendation. A theory raised for the first time in the Objection to the Report and Recommendation is deemed waived. United States v. Garfinkle, 261 F.3d 1030, 1031 (10th Cir. 2001). Even if not deemed waived, however, the record (summarized in the Respondent's Brief at pp. 14-17) clearly shows sufficient evidence to support the element of force and violence.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge, and for the reasons announced therein, denies this Petition for habeas corpus relief. A judgment will enter accordingly.

IT IS SO ORDERED this 16th day of October, 2009.


ROBIN J. CAUTHRON
United States District Judge